

WILLIAM J. HART
LUCILE E. HART

IBLA 77-210, 77-211

Decided May 12, 1977

Appeals from decisions of the Idaho State Office, Bureau of Land Management, rejecting desert land applications I-11821 and I-11822.

Affirmed in part, reversed in part.

1. Applications and Entries: Generally! ! Desert Land Entry:
Applications

Failure to answer completely a question on an application form for a desert land entry concerning citizenship of the applicant is not an adequate basis for rejecting the application when the requested information is readily apparent elsewhere on the application form.

2. Applications and Entries: Generally! ! Desert Land Entry:
Applications

Failure to include as required by 43 CFR 2521.2(b) the post office addresses of witnesses whose statements are part of an application for desert land entry is an adequate basis for rejecting the application.

3. Desert Land Entry: Generally! ! Desert Land Entry:
Applications! ! Desert Land Entry: Cancellation

Rejection of an application for desert land entry on account of a failure to include therein post office addresses

of witnesses making witness statements is without prejudice to refiling of a corrected application where there is no competing interest for the same land.

APPEARANCES: William J. Hart, Lucile E. Hart, pro sese.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On March 30, 1976, William J. Hart and Lucile E. Hart (appellants) filed Desert Land Entry Applications Nos. I-11821 and I-11822 with the Idaho State Office of the Bureau of Land Management (BLM). These applications were identical, except for differences resulting from the fact that they concerned two adjacent tracts of land. 1/

On December 16, 1976, the BLM issued decisions which notified appellants that their applications were deficient because question 3c on the application forms had not been completed properly, and because witness statements filed with the applications did not include the complete post office address of each witness. The decision stated that correction of these deficiencies was necessary before the applications would be considered acceptable for filing, and allowed appellants 30 days from their receipt of this decision in which to correct them. It also noted that failure to take action within 30 days would result in rejection of the applications. On February 2, 1977, the BLM issued another decision rejecting the applications, because the appellants had failed to correct them within the allotted 30 days. On March 1, 1977, appellants filed a joint statement indicating that corrected applications had been mailed on Friday, January 14, 1977, and that appellants had expected that they would arrive within the time allotted by the BLM. This joint statement also indicated that it constituted Notices of Appeal of the decisions to reject these applications. On March 2, 1977, the BLM informed appellants that an exhaustive search for the corrected applications had been made, but that they had not been located. Subsequently, the appeals were forwarded to this Board. Since the BLM has rejected appellants' applications, they have a right of appeal and the matter is ripe for review, unlike several recent disputes on the question of the propriety of rejecting desert land applications for flaws contained therein. Nelda E. McAndrew, 24 IBLA 205 (1976); Michael E. Heaney, 21 IBLA 339 (1975); George M. Crapo, 19 IBLA 208 (1975).

1/ No. I-11821 concerned the NE 1/4 and SE 1/4 of sec. 8, T. 4 S., R. 8 E., B.M., Idaho, and No. I-11822 concerned the NW 1/4 and SW 1/4 thereof.

[1] The first deficiency in the applications consisted of a failure to complete fully question 3c, which appears on the application form as follows: "c. Are you a [check! box] citizen [check! box] native born [check! box] naturalized?" In both applications, the first box, indicating that the appellants are citizens, was checked, but neither of the other two remaining boxes was marked. Thus, appellants failed to indicate whether they were native! born or naturalized citizens. However, this information was included on the application elsewhere. Question 3d provides as follows: "d. If naturalized give: Date [blank] in (city and state) [blank] in the Court of [blank] [Emphasis original]." On both applications, appellants had indicated that this question was "N/A," that is, not applicable. It was thus readily apparent from Question 3d that appellants were not naturalized citizens and must therefore have been native! born citizens.

In a recent case concerning rejection of a desert land entry application because of deficiencies therein, it was noted as follows:

The practice of rejecting desert land entry applications, with the consequent loss of the applicant's priority, for such "deficiencies" as an obvious typographical error, or a minor arithmetical error in the hypothetical projection of anticipated farm income, or the omission of some detail of information not specifically required, is unwarranted. * * * A desert land entry application is, by far, the most complex and difficult type of application received by BLM, and thus offers abundant opportunity for such errors. Moreover, the amount of land available for such entry is very limited, and the priority of an individual applicant is commensurately valuable. To destroy what probably is the only opportunity the applicant will ever have to make such an entry on the basis of some trifling, inconsequential error is wholly unjustified. * * * [N]o application should be summarily rejected for error unless the error or omission relates to information expressly and specifically required to be furnished and is of such significance that it would preclude favorable consideration.

Nelda E. McAndrew, *supra*. (Concurring opinion) at 208, 209. There is nothing in the regulations concerning desert land applications which makes incomplete answering of this question fatal to the application. Furthermore, the failure to answer this question fully is completely insignificant since the information requested by it is obvious elsewhere on the application. It is hard to

imagine a better example of a "trifling, inconsequential error" than this flaw. We conclude that, in these circumstances, failure to answer question 3c fully was not a valid basis for rejecting appellants' applications, and that the BLM erred insofar as its decision relied on this reason.

[2] The second deficiency in the applications consisted of a failure to include the complete post office address of each witness who made a statement in support of the applications. Although appellants alleged in their joint notice of appeal that they filed corrected applications with the BLM in a timely manner, they have failed to present any proof that they in fact did so. Despite an exhaustive search, the BLM was unable to locate any corrected applications. We conclude that no corrected applications were ever filed, and that this deficiency was, therefore, never cured.

43 CFR 2521.2(b), which sets out requirements for applications for desert land entries, provides as follows:

Post! office addresses of applicants and witnesses. Applicants and witnesses must in all cases state their places of actual residence, their business or occupation, and their post! office addresses. It is not sufficient to name only the county or State in which a person lives, but the town or city must be named also; and where the residence is in a city the street and number must be given.

Thus, there is a specific requirement in the regulations that the complete addresses of all witnesses be furnished. This information is significant to the application process, since it is important that BLM know the addresses of these witnesses so that it can inquire effectively into the validity of their testimony in support of the application. We conclude that the failure by the appellants to include these addresses, despite the BLM's warning that they must do so, was an adequate basis to reject their applications, and accordingly affirm the BLM's decision to do so.

[3] However, the BLM has indicated that there is no competing interest in the lands embraced by these applications. We note that the rejection of appellants' applications for their failure to include therein full addresses of supporting witnesses is without prejudice to their right to file corrected applications for these lands, and that appellants should accordingly refile corrected applications if they remain interested. Such refiling would, of course, be subject to any valid intervening rights.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and reversed in part.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge

